

**SUBSTANCE ABUSE PROFESSIONAL
PROCEDURES GUIDELINES
FOR
TRANSPORTATION WORKPLACE
DRUG AND ALCOHOL TESTING PROGRAMS**



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THE SUBSTANCE ABUSE PROFESSIONAL

SECTION I: INTRODUCTION

The Department of Transportation (DOT) rules define the Substance Abuse Professional (SAP) to be a licensed physician (Medical Doctor or Doctor of Osteopathy), a licensed or certified psychologist, a licensed or certified social worker, or a licensed or certified employee assistance professional. In addition, alcohol and drug abuse counselors certified by the National Association of Alcoholism and Drug Abuse Counselors (NAADAC) Certification Commission, a national organization that imposes qualification standards for treatment of alcohol-related disorders, are included in the SAP definition. All must have knowledge of and clinical experience in the diagnosis and treatment of substance abuse-related disorders (the degrees and certificates alone do not confer this knowledge). [Also, the Department may place additional certification organizations' counselors onto the SAP definition at future times. These additions will be based upon those organizations passing a rigorous review of their certification programs.]

The DOT has not authorized individuals to be SAPs who meet only State-certification criterion because qualifications vary greatly by State. In some States, certified counselors do not have the experience or training deemed necessary to implement the objectives of the rules. State-certified addiction counselors can, of course, take the NAADAC competency examination to receive certification.

The primary safety objective of the DOT rules is to prevent, through deterrence and detection, alcohol and controlled substance users from performing transportation safety-sensitive functions. The SAP is responsible for several duties important to the evaluation, referral, and treatment of employees identified through breath and urinalysis testing as being positive for alcohol and/or controlled substance use, or who refuse to be tested, or who have violated other provisions of the DOT rules.

The SAP's fundamental responsibility is to provide a comprehensive face-to-face assessment and clinical evaluation to determine if the employee needs assistance resolving problems associated with alcohol use or prohibited drug use. If the employee is found to need assistance as a result of this evaluation, the SAP recommends a course of treatment with which the employee must demonstrate successful compliance prior to returning to DOT safety-sensitive duty. Treatment recommendations can include, but are not limited to: In-patient treatment, partial in-patient treatment, out-patient treatment, education programs, and aftercare. Upon the determination of the best recommendation for assistance, the SAP will

serve as a referral source to assist the employee's entry into an acceptable treatment or education program.

The SAP shall have a working knowledge of quality programs and qualified counselors as well as insurance, benefit plans, and payment requirements. In addition, the SAP, when possible, should be cognizant of the employer's policies regarding payment for treatment; on-duty-time treatment programming; and the granting of administrative, sick, and/or annual leave for both in-patient and out-patient treatment. The SAP will also make information available to the employee regarding meetings of Alcoholics Anonymous, Narcotics Anonymous, and Al-Anon, as well as other tenable self-help groups.

Prior to the employee's return to safety-sensitive duties, a SAP is required to provide a face-to-face follow-up evaluation with the employee to determine if the individual has demonstrated successful compliance with recommendations of the initial evaluation. The SAP must provide this evaluation before an employer can consider the employee for return to safety-sensitive functions. Therefore, the evaluation serves to provide the employer with assurance that the employee has made appropriate treatment progress.

The SAP also directs a follow-up testing plan for the employee returning to work following treatment. The number and frequency of unannounced follow-up testing is directed by the SAP, and is (as mandated by DOT rules) to consist of at least six tests in the first 12 months following the employee's return to safety-sensitive duties. If poly-substance use has been indicated, the follow-up testing plan may include testing for drugs as well as alcohol (for the alcohol rule violator) and for alcohol as well as drugs (for the drug rule violator). Follow-up testing can last up to 60 months but can be terminated by the SAP following completion of the first six tests that are spread throughout the twelve-month period. This follow-up testing requirement is in addition to tests accomplished through the employer's random testing program.

In directing the follow-up testing plan, the SAP will specify the number and frequency of the follow-up tests. The employer would then be responsible for ensuring that an individual is tested according to the plan. Follow-up testing is one of the best means that the employer has to determine if the employee has stopped using controlled substances or misusing alcohol.

It is important to note, that SAPs must be knowledgeable of the appropriate DOT Operating Administrations' [Federal Highway Administration (FHWA), Federal Railroad Administration (FRA), Federal Transit Administration (FTA), Federal Aviation Administration (FAA), and Research and Special Programs Administration (RSPA)] rules governing the employers' implementation of these drug and alcohol testing regulations. Differences in the rule requirements exist.

For example, within the scope of the FHWA rule, follow-up testing is not authorized following drug or alcohol rule violations if the SAP does not recommend treatment. On the other hand, the FRA rule requires follow-up testing following a drug or alcohol violation even if treatment is not recommended

Also, RSPA currently requires an employee to have a SAP evaluation following an alcohol violation but not following a drug violation.

SECTION II: SAP DUTIES

EVALUATION:

Consistent with sound clinical and established SAP standards of care in clinical practice, and utilizing reliable alcohol and drug abuse assessment tools, the SAP must conduct a face-to-face evaluation of the client. This type session is essential to provide the SAP with an opportunity to objectively evaluate the "non-verbals" -- those physical cues to internal feelings, thoughts, and behaviors. The SAP should be cognizant of the client's appearance, posture, carriage, ability to make eye contact, and ability to relate in-person as well as other physical characteristics that would be indicative of alcohol and drug use and abuse. Attention should be placed upon the rule violation that brought the employee to the point of being required to have the SAP evaluation. Always, the SAP must provide immediate attention to individuals who may be in danger to themselves or others.

The evaluation should be comprised of a standard psycho-social history; an in-depth drug and alcohol use history (with information regarding onset, duration, frequency, and amount of use; substance(s) of use and choice; emotional and physical characteristics of use; associated health, work, family, personal, and interpersonal problems); and, a current mental status. The evaluation should provide a clinical assessment, treatment recommendations, and a treatment plan to be successfully complied with prior to the employee becoming eligible for follow-up evaluation and subsequent return (if the employer desires) to safety-sensitive functions.

Upon a SAP's finding that the employee needs assistance with a drug or alcohol problem, the SAP must inform the employer in writing of this decision. This notification should be in letter format with the SAP's official letterhead, signed by the SAP, and should contain the following:

1. Employee's name and social security number.
2. Employer's name and address.
3. Reason for the initial assessment (specific violation of the rules and date).
4. Date of the SAP assessment.
5. SAP's treatment recommendation.
6. SAP's telephone number.

Following the evaluation and upon a finding that the employee needs no assistance with a drug or alcohol problem, the SAP must inform the employer in writing of this decision. The information should be in letter format with the SAP's official letterhead, signed by the SAP, and should contain the following:

1. Employee's name and social security number.
2. Employer's name and address.
3. Reason for the initial assessment (specific violation of the rules and date).
4. Date of the SAP assessment.
5. SAP's reasons determining that the employee needs no assistance in resolving a drug or alcohol problem.
6. Follow-up testing plan (when Operating Administration rule directs).
7. SAP's telephone number.

REFERRAL:

Following the evaluation and upon a finding that the employee requires assistance with associated drug or alcohol problems, the SAP's referral of the employee to the appropriate treatment program is vital. This referral should be consistent with clinically evaluated employee needs. The SAP should also take into consideration other stipulations such as employee insurance coverage, employee ability to pay for care, employer treatment contracts, employer policies regarding availability of leave for employees needing assistance, and availability of treatment and education programs.

The SAP should have a working knowledge of quality programs and qualified counselors. When a variety of appropriate treatment programs are available within the employee's geographical area, the SAP may permit the employee to select the facility or practice from a SAP-approved provider list. The SAP should facilitate the referral by making contact with the recommended treatment program. It is not necessary for the SAP to make the initial appointment for the employee unless the SAP believes it necessary. The SAP should transmit, by appropriate means, the treatment plan with assessment determinations to the treatment provider.

SAPs are prohibited from referring an employee to certain treatment entities listed in SECTION III of these procedures.

FOLLOW-UP EVALUATION:

The SAP's evaluation of the employee prior to return to safety-sensitive duties is vital in gauging (for the employer) the employee's success in meeting the requirements in the initial evaluation's treatment plan. The violation of a DOT drug and alcohol rule has caused the employee's ability to perform safety-sensitive duties to be called into question. The employee's ability to demonstrate successful compliance with the initial treatment recommendations is key to an

employer's decision to return an employee to transportation safety-sensitive duties. Importantly, the follow-up evaluation is clinically based and should provide the employer a concise assessment of the employee's success in fulfilling requirements of the treatment plan.

In some cases, the SAP has the latitude to conduct the follow-up evaluation prior to the employee's completion of the full range of recommended treatment. The SAP would base the determination of whether the employee demonstrates successful compliance with the treatment recommendation upon written reports from and personal communication with the

treatment program professionals as well as a face-to-face interview with the employee. Written information from the treatment program would include a treatment progress report and/or discharge summary. The personal contact with treatment program professionals could be telephonic conversation regarding the nature of the employee's progress, prognosis for success, and any other salient factors that could assist the SAP's follow-up evaluation. If the treatment program professional believes the individual has not made significant progress in treatment, the SAP should not proceed with conducting a follow-up interview session with the employee. It is imperative that a SAP focus upon more than simply the employee's attendance in the treatment program, but rather upon the level of participation in the program and the progress the employee has made in dealing with the drug or alcohol problem.

The SAP, furnished with information from the treatment program that the employee has made sufficient progress, will meet with the employee to discuss the treatment effort, behavioral changes, and plans for continued treatment plan follow through as well as return-to-duty and follow-up testing issues. Based upon clinical judgement that the employee has made progress sufficient to warrant return to safety-sensitive functions, the SAP will provide the employer with a recommendation and a follow-up testing plan.

Or, believing the individual has not demonstrated successful compliance with the treatment recommendation, the SAP will postpone the re-evaluation pending the employee's further compliance with the treatment plan. With a

premium on public safety, an employer is best served if the SAP provides an evaluation designed to ascertain if the employee demonstrates successful compliance rather than an evaluation that is a cursory administrative review.

It is important to note, that no employee should be considered eligible for receiving a follow-up evaluation prior to completion of an in-patient or partial in-patient / day-treatment program. An employee entering this type of program is not to receive a follow-up evaluation while still participating in that program. Upon program completion, the employee can be evaluated prior to subsequent entry into or completion of an after-care out-patient treatment program.

The SAP's report, outlining the employee's ability to demonstrate successful compliance, to the employer should be in letter format with the SAP's official letterhead, signed by the SAP, and should contain the following:

1. Employee's name and social security number.
2. Employer's name and address.

3. Reason for initial assessment (specific violation of the rules and the violation date).
4. Date(s) of initial assessment and brief synopsis of the rehabilitation plan.
5. Name of practice or program providing the treatment.
6. Inclusive dates of the employee's treatment program.
7. Clinical characterization of the employee's participation in the treatment program.
8. SAP's clinical determination as to the employee's demonstration of successful compliance.
9. Follow-up testing plan.
10. SAP's telephone number.

FOLLOW-UP TESTING:

Follow-up testing serves as more than an employer's additional assurance that an employee is performing safety-sensitive work in an alcohol-free and/or drug-free manner. It serves the recovering employee as an adjunct to the total and on-going rehabilitation effort. Despite the fact that treatment can be short term, the rehabilitation process for the recovering alcohol abuser and drug user usually requires long-term effort on the part of the employee. Because most relapses occur during the first 12 months following treatment, this effort can be enhanced in many ways during this first year (and thereafter) -- among these are the recovering employee's required participation in follow-up testing program as well as participation in aftercare programs and in self-help groups.

Therefore, the SAP must present the employer and the employee a plan for follow-up testing. The SAP can re-evaluate the plan at any time and terminate the plan following the completion of the six tests during the first year. Testing should be spread throughout the year, unpredictable, and unannounced. An employee's follow-up testing program can last up to 60 months. The SAP will provide the employer with the recommended number of tests and the approximate frequency of the tests (e.g. 4 tests in the first 6 months, and 2 in the final six months of the first year). Employers are best suited to arrange for the actual tests to be conducted because they are aware of employee performance issues and schedule circumstances. This follow-up testing requirement is in addition to tests accomplished through the employer's random testing program.

SECTION III: SAP PROHIBITIONS

The DOT rules state that the SAP shall not refer an employee requiring assistance to the SAP's private practice or to a person or organization from which the SAP receives remuneration or to a person or organization in which the SAP has a financial interest. To prevent the appearance of a conflict of interest, the intent of the rules is to preclude the SAP from making referrals to entities with which the SAP is financially associated (to include any in-patient, out-patient, and education organizations or practices). However, this requirement could impose hardship upon employer and employees in remote areas or in situations where employee assistance is provided by contract or through a health insurance program. Therefore, the rules do not prohibit the SAP from referring an employee for assistance by:

1. A public agency, such as a State, county, or municipality;
2. The employer or a person under contract to provide treatment for alcohol or drug problems on behalf of the employer;
3. The sole source of therapeutically appropriate treatment under the employee's health insurance program; or
4. The sole source of therapeutically appropriate treatment reasonably accessible to the employee.

The intent of these prohibitions is to ensure that the SAP referral in no way is of financial benefit to the SAP. And, because the SAP needs to have knowledge of reliable treatment resources, the SAP needs to maintain objectivity in the evaluation of what actually constitutes a reliable resource.

SECTION IV: RELEASE OF INFORMATION

Imperative to SAP functioning is the ability to receive and communicate pertinent information regarding the employee's evaluation and treatment progress. Because much of this information is confidential in nature, the SAP needs to obtain from the employee specific releases authorizing disclosure of information. These specific releases will permit the SAP to:

1. Give the synopsis of the employee's treatment plan to the employer.
2. Provide the assessment evaluation and treatment plan to the counseling / treatment / education organization(s) or practice(s).
3. Receive diagnostic information, treatment progress reports, and program completion information, as well as program involvement dates from counseling / treatment / education organization(s) or practice(s)
4. Provide the follow-up evaluation synopsis to the employer.

[If the employer's Employee Assistance Program serves as the conduit between SAP and employer, releases are needed as appropriate.]

The privileged client-counselor relationship has been supported by Federal and State laws and rules, codes of ethical standards, and certification and licensing boards by which counselors are regulated. Exceptions to confidentiality primarily occur if the client poses a clear and imminent danger to self or others, if there is known or suspected child abuse or neglect, when medical records are court ordered by a judge compelling disclosure, or when the counselor seeks medical or legal consultation. Client record information can also be released to DOT for audit and review purposes in accordance with Federal disclosure rules.

SECTION V: RECORD MAINTENANCE

Records pertaining to a determination by a SAP concerning an employee's need for assistance and records concerning an employee's ability to demonstrate successful compliance with recommendations of the SAP need to be maintained for a period of five years. Records should be maintained in limited access areas that permit no unauthorized entry.

SECTION VI: QUESTIONS AND ANSWERS

1. Under the DOT rules, must a SAP be certified by DOT in order to perform SAP functions?

The DOT does not certify, license, or approve individual SAPs. The SAP must be able to demonstrate to the employer qualifications necessary to meet DOT rule requirements. The DOT rules defines the SAP to be a licensed physician (Medical Doctor or Doctor of Osteopathy), a licensed or certified psychologist, a licensed or certified social worker, or a licensed or certified employee assistance professional. All must have knowledge of and clinical experience in the diagnosis and treatment of substance abuse-related disorders (the degrees and certificates alone do not confer this knowledge). In addition, alcohol and drug abuse counselors certified by the National Association of Alcoholism and Drug Abuse Counselors (NAADAC) Certification Commission, a national organization that imposes qualification standards for treatment of alcohol-related disorders, are included in the SAP definition.

2. Can SAP evaluations be conducted telephonically?

Both the initial and follow-up SAP evaluations are clinical processes that must be conducted face-to-face. Body language and appearance offer important physical cues vital to the evaluation process. Tremors, needle marks, dilated pupils, exaggerated movements, yellow eyes, glazed or bloodshot eyes, lack of eye contact, a physical slowdown or hyperactivity, appearance, posture, carriage, and ability to communicate in person are vital components that cannot be determined telephonically. In-person sessions carry with them the added advantage of the SAP's being able to provide immediate attention to individuals who may be a danger to themselves or others.

3. Are employers required to refer a discharged employee to a SAP?

The rules require an employer to advise the employee, who engages in conduct prohibited under the DOT rules, of the available resources for evaluation and treatment including the names, addresses, and telephone numbers of SAPs and counseling and treatment programs. In the scenario where the employer discharges the employee, that employer would be considered to be in compliance with the rules if they provide the list and ensure that SAPs on the list are qualified. This employer has no further obligation (e.g., facilitate referral to the SAP; ensure that the employee receives a SAP evaluation; pay for the evaluation; or seek to obtain, or maintain the SAP evaluation synopsis) than to present the employee with the required resource list and ensure that SAPs on the list are qualified.

4. How will the SAP evaluation process differ if the employee is discharged by the employer rather than retained following a rule violation?

After engaging in prohibited conduct and prior to performing safety-sensitive duties in any DOT regulated industry, the employee must receive a SAP evaluation. And, when assistance with a problem is clinically indicated, the employee must receive that assistance, and demonstrate successful compliance with the recommendation as evaluated through a SAP follow-up evaluation.

The SAP process has the potential to be more complicated when the employee is not retained by that employer. In such circumstances, the SAP will likely not have a connection with the employer for whom the employee worked nor have immediate access to the exact nature of the rule violation. In addition, the SAP may have to hold the synopsis of evaluation and recommendation for assistance report until asked by the employee to forward that information to a gaining employer wishing to return the individual to safety-sensitive duties. In some cases, the SAP may provide the evaluation, referral to a treatment professional, and the follow-up evaluation before the employee has received an offer of employment. This circumstance may require the SAP to hold all reports until asked by the individual to forward them to the gaining employer. If the gaining employer has a designated SAP, that SAP may conduct the follow-up evaluation despite the fact that the employee's SAP has already done so. In other words, a gaining employer may determine to their own satisfaction (e.g., by having the prospective employee receive a follow-up SAP evaluation utilizing the employer's designated SAP) that the prospective employee has demonstrated successful compliance with recommended treatment.

5. Do community lectures and self-help groups qualify as education and / or treatment?

Self-help groups and community lectures qualify as education but do not qualify as treatment. While self-help groups such as Alcoholics Anonymous (AA) and Narcotics Anonymous (NA) are crucial to many employees' recovery processes, these efforts are not considered to be treatment programs in and of themselves. However, they can serve as vital adjuncts in support of treatment program efforts. AA and NA programs require a level of anonymity which makes reporting client progress and prognosis for recovery impossible. If the client provides permission, AA and NA sponsors can provide attendance status reports to the SAP. Therefore, if a client is referred to one of these groups or to community lectures as a result of the SAP evaluation, the employee's attendance, when it can be independently validated, can satisfy a SAP recommendation for education as well as a gauge for determining treatment program successful compliance when both education and treatment are recommended by the SAP's evaluation.

6. Can an employee who has violated the rules return to safety-sensitive functions prior to receiving a SAP evaluation?

The employee is prohibited from performing any DOT regulated safety-sensitive function until being evaluated by the SAP. An employer is prohibited from permitting the employee to engage in safety-sensitive duties until evaluated. If the evaluation reveals that assistance is needed, the employee must receive the assistance, be re-evaluated by the SAP (and determined to have demonstrated successful compliance with the recommendation), and pass a return-to-duty alcohol and/or drug test prior to performing safety-sensitive duties.

7. Can an employer overrule a SAP treatment recommendation?

If found to need assistance, the employee cannot return to safety-sensitive functions until a SAP's follow-up evaluation determines that the employee has demonstrated successful compliance with the recommended treatment. An employer who returns a worker to safety-sensitive duties when the employee has not complied with the SAP's recommendation is in violation of the DOT rule and is, therefore, subject to penalty.

8. Is an employer obligated to return an employee to safety-sensitive duty following the SAP's finding during the follow-up evaluation that the employee has demonstrated successful compliance with the treatment recommendation?

The DOT rules do not obligate an employer to return the employee to a safety-sensitive job. Demonstrating successful compliance with prescribed treatment and testing negative on the return-to-duty alcohol test and/or drug test, are not guarantees of employment or of return to work in a safety-sensitive position; they are preconditions the employee must meet in order to be considered for hiring or reinstatement into safety-sensitive duties by an employer.

9. Can an employee receive the follow-up evaluation from a SAP who did not conduct the initial SAP evaluation?

Although it is preferable for the same SAP to conduct both evaluations, this will not be realistic in some situations. For instance, the initial SAP may no longer be in the area, still under contract to the employer, or still hired by the employer to conduct the service. Additionally, the employee may have moved from the area to a new location. In all cases, the employer responsibility is to ensure that both the initial SAP and the follow-up SAP are qualified according to the DOT rules.

10. Who is responsible for reimbursing the SAP for services rendered?

The DOT rules do not affix responsibility for payment for SAP services upon any single party. The Department has left discussions regarding payment to employer policies and to labor-management agreements. Therefore, in some instances, this issue has become part of labor-management negotiations. Some employers have hired or contracted staff for the purpose of providing SAP services. For some employees, especially those who have been released following a violation, payment for SAP services will become their responsibility. In any case, the SAP should be suitable to the employer who chooses to return the employee to safety-sensitive functions. Employer policies should address this payment issue.

11. Can the SAP direct that an employee be tested for both alcohol and drugs for the return-to-duty test and during the follow-up testing program?

If the SAP determines that an employee referred for alcohol misuse also uses drugs, or that an employee referred for drug use also misuses alcohol, the SAP can require that the individual be tested for both substances. The SAP's decision to test for both can be based upon information gathered during the initial evaluation, the SAP's consultation contacts with the treatment program, and/or the information presented during the follow-up evaluation.

12. Can random testing be substituted for required follow-up testing?

Follow-up testing is directly related to a rule violation and subsequent return to safety-sensitive duty. Random tests are independent of rule violations. Therefore, the two test types are to be separated -- one cannot be substituted for the other or be conducted in lieu of the other. Follow-up testing should be unpredictable, unannounced, and conducted not less than six times throughout the first 12 months after the employee returns to safety-sensitive functions. Follow-up testing can last up to 60 months. An employee subject to follow-up testing will continue to be subject to an employer's random testing program.

13. If a company has several employees in follow-up testing, can those employees be placed into a follow-up random testing pool and selected for follow-up testing on a random basis?

Follow-up testing is not to be conducted in a random way. An employee's follow-up testing program is to be individualized and designed to ensure that the employee is tested the appropriate number of times as directed by the SAP. Random testing is neither individualized nor can it ensure that the employee receives the requisite number of tests.

14. Who is responsible for paying for follow-up testing recommended by the SAP?

The DOT rules do not affix responsibility for payment for follow-up testing upon any single party. The Department has left discussions regarding payment to employer policies and to labor-management agreements. Therefore, in some instances, this issue has become part of labor-management negotiations. However, in making the decision to return the employee to safety-sensitive duty, the employer is, in essence, determining that costs associated with hiring and training a new employee exceeds costs associated with conducting follow-up testing of the returning employee. In any case, whether the employer pays or the employee pays, if the employee returns to performance safety-sensitive functions, the employer must

ensure that follow-up testing occurs as required. The employer will be held accountable if the follow-up testing plan is not followed.

15. What actions are to occur if an employee tests positive while in the follow-up testing program?

Employees testing positive while in follow-up testing are subject to specific DOT operating administration rules regarding positive drug and alcohol tests. In addition, the employees are subject to employer policies related to second violations of DOT rules.

16. Can a SAP recommend that six follow-up tests be conducted in less than six months and then suspend testing after all six are conducted?

Follow-up testing must be conducted a minimum of six times during the first twelve months following the employee's return to safety sensitive functions. The intent of this requirement is that testing be spread throughout the 12 month period and not be grouped into a shorter interval. When the SAP believes that the employee needs to be tested more frequently during the first months after returning to duty, the SAP may recommend more than the minimum six tests or can direct the employer to conduct more of the six tests during the first months rather than toward the latter months of the year.

17. What are the specific regulations governing employers' implementation of the DOT drug and alcohol testing rules?

The FHWA regulation is 49 CFR Part 382; the FRA regulation is 49 CFR Part 219; the FTA regulation is 49 CFR Parts 653 and 654; the FAA regulation is 14 CFR Parts 65, 121, and 135; and the RSPA regulation is 49 CFR Part 199. Drug and alcohol testing procedures are outlined in 49 CFR Part 40.